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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,036	07/08/2003	Akhlaq Moman	180577-00630WS	9805
31013	7590	12/29/2005	EXAMINER	
KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 1177 AVENUE OF THE AMERICAS NEW YORK, NY 10036				PASTERCZYK, JAMES W
ART UNIT		PAPER NUMBER		
		1755		

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/616,036	MOMAN ET AL.	
	Examiner	Art Unit	
	J. Pasterczyk	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 December 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4,5,7,8,10,11,14-19,21-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) 27,28 and 30 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4,5,7,8,10,11,14-19 and 21-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1,4,5,7,8,10,11,14-19,21-28 and 30 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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1. This Office action is in response to the RCE filed 12/12/05 incorporating the After Final amendment filed 10/11/05 and refers to the Office action mailed 9/1/05. Claims 27, 28 and 30 remain withdrawn as nonelected in an earlier Restriction Requirement.

2. The objection to the Oath has been overcome due to the filing of a substitute Oath executed by all inventors in the present application.

3. Claims 1, 14, 18, 24, 26 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, in iii), insert --a-- before "titanate", and in the penultimate line make n be less than or equal to 4 as well as greater than zero in order to be consistent with claim 10 which allows tetraalkoxytitanates; no new matter would be seen.

In claim 14, penultimate line, insert a comma after "halogen atom".

In claim 18, insert a comma after "polyvinylalcohol" in the third line.

In claim 24, the formula given for the alumoxane is not very accurate since it allows only monomers while alumoxanes are also often found as liner polymers, cyclic polymers, and even polymeric cage structures. The current formula precludes all these other structures. No new matter would be seen given that it is well-known in the art that metallocenes have these multiple structural forms.

In claim 26, l. 2, insert --of-- after "in terms".

Although claim 30 is currently withdrawn, applicants may wish to insert a hyphen between "methyl" and "1" in the last compound.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 4, 5, 7, 8, 10, 11, 14-19 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shipley in view of Mink and Hamed as cited in and for the reasons of record given in paragraph 8 of the previous full Office action.

6. Applicant's arguments filed 12/12/05 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in Mink at col. 1, l. 45.

Applicants further argue that the catalyst art is notoriously unpredictable. However, while this may be true, it is also in itself a motivation to experiment since only empirical experimentation and observation would be able to confirm or refute the ability of the catalyst suggested by Mink and Hamed in combination with that of Shipley to produce a polyolefin having a broad and/or bimodal molecular weight distribution.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Pasterczyk whose telephone number is 571-272-1375. The examiner can normally be reached on M-F from 9 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached at 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Pasterczyk

AU 1755

12/26/05



J. A. LORENKO  
SUPERVISORY PATENT EXAMINER